

BARRINGTON CLARKE : CIVIL ACTION
:
v. :
:
UNITED STATES OF AMERICA :
: NO. 97-CV-3028
: (90-CR-238-05)

The Magistrate Judge also rejected Clarke's claim of ineffective assistance of counsel. Clarke claims that his

counsel did not adequately prepare for trial or investigate the facts and that he did not present certain alibi evidence and witnesses. Clarke's trial counsel submitted an affidavit which states that he did not have adequate time to prepare for trial.

The affidavit submitted by Clarke's counsel must be viewed in context. Despite warnings from the Court, Clarke dismissed his first attorney approximately one month before trial. Clarke was specifically warned that his new attorney might not be as well prepared as his former attorney.

More importantly, as detailed in the Magistrate Judge's Report and Recommendation, Clarke cannot identify any deficiencies in his counsel's performance that might have affected his conviction or sentence. Strickland v. Washington, 466 U.S. 668, 688, 694 (1984) (in order to succeed on ineffective assistance of counsel claim, petitioner must show that: (1) "counsel's representation fell below an objective standard of reasonableness" and (2) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.").

I agree with the Magistrate Judge's conclusion that the record in this case conclusively shows that Clarke is not entitled to relief. Therefore, Clark's § 2255 petition is denied without an evidentiary hearing. See Walker v. Johnston, 312 U.S. 275, 285 (1941) (standard for determining whether habeas petitioner is entitled to evidentiary hearing); United States v. Costanzo, 625 F.2d 465, 468 (3d Cir. 1980)(same).

Clarke has not made "a substantial showing of the denial of a constitutional right" such that a certificate of appealability should issue. 28 U.S.C. § 2253(c)(2).

AND NOW, after consideration of the Motion to Vacate, Set Aside and/or Correct a Sentence pursuant to 28 U.S.C. § 2255; the Report and Recommendation of Chief United States Magistrate Judge James R. Melinson; and the Petitioner's objections; and for the reasons stated above, it is ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED;
2. The Motion to Vacate, Set Aside and/or Correct a Sentence pursuant to 28 U.S.C. § 2255 is DENIED; and
3. There is no probable cause to issue a certificate of appealability.

BY THE COURT:

JAMES MCGIRR KELLY, J.